IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9385 OF 2004

Shri Narendra Vithoba Patil ...Petitioner

V/s.

State of Maharashtra & Ors. ...Respondents

Mr.R.K. Mendadkar for the Petitioner.

Mr.C.R. Sonawane, Assistant Government Pleader, for Respondent Nos.1 to 3 and 5.

CORAM : H.S. BEDI, C.J., &
V.M. KANADE, J.

DATED : OCTOBER 10, 2006.

P.C. :-

1. This petition has been filed challenging the order dated 25th October, 2004 passed by the Caste Scrutiny Committee invalidating the cast certificate of the petitioner which identified him as Mahadeo Koli. This writ petition is the third round of litigation between the parties.

2. On 5th July, 1997, the Petitioner was granted a caste certificate as being a Mahadeo Koli recognized as a Schduled Tribe

by respondent no.4. The petitioner thereafter moved respondent no.2 for verification of the caste certificate and tendered about 16 documents in support of his claim and pending the decision a provisional caste certificate was also issued to him in September, 2003. The petitioner also appeared for the HSC Examination held in March 2004 and was declared successful. On the basis of this provisional certificate, the petitioner was granted provisional admission in the B.A.M.S. Course by respondent no.3 i.e. the Director of Medical Education, Maharashtra State. On inquiry made by the Vigilance Cell attached to respondent no.2, the following observations were recorded.

> "As per the statement given by the candidate's father, the information furnished with regard to the customs, traits, characteristics match with that of Mahadeo Koli. However, residence of guardian of the applicant is near sea cost where Koli and Son Koli community is found."

3. Notwithstanding the observations aforesaid however,

respondent no.2 still issued a Show Cause Notice to the petitioner calling him to file a reply to the inquiry report. A reply was accordingly filed and various documents were put on record including extracts from the school register for the year 1944 showing the caste of Tukaram Hari Patil, grandfather of the petitioner and the grandfather's brother-Krishna Lakhama Patil as Mahadeo Koli. The Committee nevertheless refused to accept the documentary evidence and invalidated the caste certificate. The petitioner, therefore, filed Writ Petition No.5643 of 2004 in this Court on which the following order was made on 12th July, 2004.

> "Rule. Mr.V.P. Malvankar, learned Assistant Government Pleader, waives service for respondent nos.1, 2, 3 and 5. By consent, Rule is taken up for hearing forthwith.
>
> 2. This petition is directed against the order passed by the Scheduled Tribe Certificate Scrutiny Committee, Konkan Division, Thane, dated 30th April, 2004.
>
> 3. Briefly stated the facts are that the

petitioner approached the Scrutiny Committee for the issue of caste certificate to the effect that he belongs to “Mahadeo-Koli”, Scheduled Tribe to enable him to apply for admission to B.A.M.S. Course. In support of his claim, apart from appearing before the Committee and furnishing certain information, the petitioner has filed sixteen documents including the school records of the petitioner's grand-father, paternal uncle, aunt and other relatives.

4. The Scrutiny Committee, while considering the claim of the petitioner and evaluating the probative value of the documents produced, completely brushed aside the documentary evidence produced by the petitioner in respect of his grand-father and the other relations and decided the matter solely on the basis of the School Leaving Certificate of the petitioner's father where his caste was mentioned as “Sonkoli” and

invalidated the claim of the petitioner as Mahadeo-Koli".

5. The Committee has also failed to consider the following findings recorded by the Research Officer, Vigilance Cell of the Committee.

> "As per the statement of the father of the candidate, the information furnished with regard to the customs, traits, characteristics match with that of Mahadeo Koli. However, residence of guardian of the applicant is near sea coast where Koli and Son Koli community is found."

6. The Scrutiny Committee has thus failed to apply its mind to the relevant records placed before the Committee. We, therefore, quash and set aside the impugned order passed by the Scrutiny Committee. The case is remanded back to the Committee to consider the petitioner's claim

in accordance with law. The Committee is directed to decide the matter within a period of three months from today. All contentions on merits are left open to the parties. Rule is made absolute accordingly.

7. If the order of the Committee is adverse to the petitioner, it will not be implemented for a period of four weeks from the date of communication or order to the petitioner.

Parties be given copies of this order duly authenticated by the Sheristedar/Private Secretary."

4. The matter was again remitted to the Committee which gave its findings again rejecting the petitioner's case by the impugned order Annexure A dated 25th October, 2004.

5. Rule in this matter was issued and interim relief was granted to the petitioner and the case has been heard today.

6. It has been argued by the learned Advocate for the petitioner that in the light of the entires in the school record

pertaining to the grandfather of the petitioner and the brother of his grandfather, which were made way back in 1944, no other material was required to be produced in support of the case of the petitioner. It has also been pointed out that the caste Mahadeo Koli had been identified as a Scheduled Tribe for the first time in the year 1950 and as such the entries aforesaid being long before that time had great probative value. It has also been highlighted that no dispute had been raised with regard to the authenticity of the entries aforesaid.

7. The learned Counsel for the respondent has however submitted that in the facts pointed out above it would be appropriate to remand the case yet against to Respondent No.2 for a fresh appraisal.

8. We have considered the arguments advanced by both the Counsel. We find no justification for making an order of remand for the second time, more particularly, as the petitioner is a young student doing the B.A.M.S. Course. We have perused the School Register ourselves and it shows that the petitioner's grandfather, Tukaram and his brother Krishna and their cousin-Hasha Kanu Patil

were identified as Mahadeo Koli, by entries in the school record in 1944 much before the order of 1950 by which the Mahadeo Kolis were designated as a Scheduled Tribe by a Presidential order. We are therefore of the opinion that the decision has to go in favour of the petitioner, and to order remand will only prolong his agony.

9. We accordingly allow this petition in terms of prayer clauses (b) and (c) . The necessary compliance to be made within two months from today.

10. With this direction, Writ Petition is disposed of.

CHIEF JUSTICE

V.M. KANADE, J.